



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

OCT 10 2012

VIA FIRST CLASS MAIL

Michelle Johnson

Alpine, UT 84004

RE: MUR 6532  
Jason Buck for Congress, *et al.*

Dear Ms. Johnson:

On February 24, 2012, the Federal Election Commission ("Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time.

After considering the circumstances of this matter, the Commission, on October 2, 2012, found that there is no reason to believe you violated 2 U.S.C. § 441a(a), a provision of the Act. Accordingly, the Commission closed its file in this matter as it pertains to you. The Factual and Legal Analysis, explaining the Commission's finding, is enclosed.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Margaret Ritzert Howell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENT: Michelle Johnson**

**MUR: 6532**

**I. GENERATION OF MATTER**

This matter was generated by a complaint filed by Kelly Casaday. *See* 2 U.S.C. § 437(g)(a)(1).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Jason Buck for Congress and James Gilbert in his official capacity as treasurer ("Committee") is the principal campaign committee of Jason Buck, a first-time candidate who sought the Republican nomination for the U.S. House of Representatives from Utah's Second Congressional District in 2012. Buck and the Committee filed a Statement of Candidacy and Statement of Organization, respectively, on August 28, 2011. Buck failed to win the Republican nomination at the party's nominating convention on April 21, 2012.

As reflected in the chart below, the Committee disclosed loans from seventeen individuals ("Contributors") totaling \$80,500 on Schedules A (Itemized Receipts) and C (Loans) of its 2011 Year End Report. Complainant alleges that these loans were excessive contributions. Compl. at 1.

The Committee's 2012 Pre-Convention Report, filed April 9, 2012, disclosed disbursements made to repay these loans prior to the nominating convention on April 21, 2012. At that time, loan balances remained outstanding for only four of the seventeen Contributors – Bruce Frandsen, Nyla Frandsen, Ty Mattingly, and Bruce Morrison (indicated with an asterisk) – and those amounts were from loans made in connection with the nominating convention.

Contributor	Election	Amount of Loan	Date Loan Made	Amount Repaid	Date of Repayment
Karen Abelhouzen	Primary	\$2,500	12/31/11	Paid in full	2/02/12
	General	\$2,500	12/31/11	Paid in full	2/02/12
Richard Todd Abelhouzen	Primary	\$2,500	12/31/11	Paid in full	2/02/12
	General	\$2,500	12/31/11	Paid in full	2/02/12
Bruce Frandsen*	Convention	\$500	12/30/11	\$0	N/A
	Primary	\$2,500	12/30/11	Paid in full	1/09/12
	General	\$2,500	12/30/11	Paid in full	1/09/12
Mary Frandsen	Convention	\$2,500	12/29/11	Paid in full	1/23/12
	Primary	\$2,500	12/29/11	Paid in full	1/23/12
Mel Frandsen	Convention	\$500	12/29/11	Paid in full	1/23/12
	Primary	\$2,500	12/29/11	Paid in full	1/23/12
Nyla Frandsen*	Convention	\$2,500	12/30/11	\$1,000	1/09/12
	Primary	\$2,500	12/30/11	Paid in full	1/09/12
	General	\$2,500	12/30/11	Paid in full	1/09/12
Lee Johnson	Convention	\$2,500	12/31/11	Paid in full	1/11/12
	Primary	\$2,500	12/31/11	Paid in full	1/11/12
	General	\$2,500	12/31/11	Paid in full	1/11/12
Michelle Johnson	Convention	\$2,500	12/31/11	Paid in full	1/11/12
	Primary	\$2,500	12/31/11	Paid in full	1/11/12
	General	\$2,500	12/31/11	Paid in full	1/11/12
Ty Mattingly*	Convention	\$2,500	12/30/11	\$1,500	1/11/12
	Primary	\$2,500	12/30/11	Paid in full	1/11/12
	General	\$2,500	12/30/11	Paid in full	1/11/12
Julie Mattingly	Convention	\$2,500	12/30/11	Paid in full	1/11/12
	Primary	\$2,500	12/30/11	Paid in full	1/11/12
	General	\$2,500	12/30/11	Paid in full	1/11/12
Amy Morrison	Convention	\$2,500	12/31/11	Paid in full	1/07/12
Bruce Morrison*	Convention	\$2,500	12/31/11	\$2,250	1/07/12
Tina Sawyer	Convention	\$2,500	12/31/11	Paid in full	1/10/12
Becky Warner	Convention	\$500	12/31/11	Paid in full	1/26/12
Vincent Warner	Convention	\$1,500	12/31/11	Paid in full	1/26/12
Brigitte Wing	Convention	\$2,500	12/31/11	Paid in full	1/11/12
	Primary	\$2,500	12/31/11	Paid in full	1/11/12
	General	\$2,500	12/31/11	Paid in full	1/11/12
Hal Wing	Convention	\$2,500	12/31/11	Paid in full	1/11/12
	Primary	\$2,500	12/31/11	Paid in full	1/11/12
	General	\$2,500	12/31/11	Paid in full	1/11/12

- 1 The only four Contributors to respond to the Complaint – Bruce, Mary, Mel, and Nyla
- 2 Frandsen – all submitted identical Responses. See Mary Frandsen Resp. (Mar. 15, 2012); Bruce
- 3 Frandsen Resp. (Mar. 14, 2012); Nyla Frandsen Resp. (Mar. 14, 2012); Melvin Frandsen Resp.
- 4 (no date). According to their Responses, the Committee advised these individuals that they

1 could each contribute \$2,500 for each of three elections (convention, primary, and general),  
2 totaling \$7,500 per person. *Id.* The Committee also assured them that they could make the  
3 contributions as loans that would be repaid as it raised money from other contributors. *Id.* Each  
4 of them made loans of varying amounts and, according to the Contributors' Responses and the  
5 Committee's disclosure reports, the majority of these loans have been repaid. *Id.*

6 **B. Legal Analysis**

7 The Federal Election Campaign Act of 1971, as amended (the "Act") defines  
8 "contribution" to include loans made by any person for the purpose of influencing any election  
9 for federal office. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a). A loan is a contribution at the  
10 time it is made and is a contribution to the extent that it remains unpaid. 11 C.F.R.  
11 § 100.52(b)(2). A loan that exceeds the contribution limits of the Act is unlawful whether or not  
12 it is repaid. 11 C.F.R. § 100.52(b)(1). Also, the aggregate amount loaned to a committee by a  
13 contributor, when added to any other contributions from that individual to that committee, shall  
14 not exceed the contribution limits set forth by the Act. *Id.*

15 For the 2011-2012 election cycle, the Act limits the amount of contributions that any  
16 person can make to any authorized political committee to an aggregate of \$2,500 per election.  
17 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b). The Act defines "election" to include a general  
18 election, a primary election, and a convention or caucus of a political party which has authority  
19 to nominate a candidate. 2 U.S.C. § 431(1)(A), (B); *see also* 11 C.F.R. § 100.2. The  
20 Commission has previously stated that the question of whether a particular event – including a  
21 nominating convention – constitutes an election is determined by an analysis of relevant state  
22 law. *See* Advisory Op. 2004-20 (Farrell for Congress) at 3. In analyzing state law, so long as a

1 convention has the potential to nominate a candidate, the Commission will deem it to have the  
2 "authority to nominate" within the meaning of the Act and Commission regulations. *See id.*

3 While Utah law does not specifically address nominating conventions, it does allow  
4 them, in that political parties are not required to participate in the primary election and may  
5 instead submit the names of its candidates to the lieutenant governor. *See Utah Code Ann.*  
6 § 20A-9-403(2)(d).<sup>1</sup> Under the Utah Republican Party Constitution, the Party has the authority  
7 to nominate candidates through a nominating convention. *See Utah Republican Party*  
8 *Constitution art. XII, § 2A* ("The Party shall nominate candidates for partisan offices by a  
9 nominating convention and primary elections.").<sup>2</sup> Accordingly, the Party's nominating  
10 convention qualifies as an election under 2 U.S.C. § 431(1).

11 Utah's election cycle thus consists of three possible elections: a nominating convention,  
12 a primary election, and a general election. Accordingly, individuals are permitted to contribute  
13 up to \$2,500 to a candidate per election, or \$7,500 to a candidate over the election cycle. *See*  
14 *Advisory Op. 2004-20 at 5* ("The Commission recognizes that where, as here, state law gives  
15 state party conventions the authority to nominate, not just endorse, a candidate, the need for  
16 separate contribution limits arises for candidates seeking nomination to Federal office during the  
17 convention phase, and potentially, also during a primary election.").

18 If Michelle Johnson's loans exceeded the contribution limits, they would have constituted  
19 excessive contributions, regardless of whether or not they were repaid. However, the 2011 Year

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<sup>1</sup> The statute states, "[e]xcept for presidential candidates, if a registered political party does not wish to participate in the primary election, it shall submit the names of its county candidates to the county clerks and the names of all of its candidates to the lieutenant governor by 5 p.m. on May 30 of each even-numbered year." *Id.*

<sup>2</sup> According to the Utah Republican Party website, a "State Nominating Convention" is a gathering of state delegates, elected at state-wide caucuses, to elect the party's nominees for partisan statewide offices, including the U.S. House of Representatives. *Convention: Frequently Asked Questions*, <http://utgop.org/inner.asp?z=5E5F5759> (last visited July 23, 2012).

- 1 End Report reveals that Johnson made no more than \$2,500 in loans per election. Therefore,
- 2 none of Johnson's loans constitute excessive contributions.<sup>3</sup> Accordingly, the Commission
- 3 found no reason to believe that Michelle Johnson violated 2 U.S.C. § 441a(a) by making
- 4 excessive contributions.

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<sup>3</sup> Pursuant to 11 C.F.R. § 102.9(e)(3), "If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated . . . or reattributed . . . as appropriate." Any such contributions not refunded, redesignated or reattributed become excessive contributions once the candidate is no longer a candidate in that election cycle. *See e.g.*, MUR 6235 (Cannon for Congress), MUR 6230 (Wynn for Congress). Here, the Committee repaid all of the loans relating to the primary and general election prior to the nominating convention on April 21, 2012. *See supra* p. 5. Therefore, because they were proper when made, and repaid prior to the termination of Buck's potential candidacy in the primary and general elections, the loans do not appear to constitute excessive contributions under either 2 U.S.C. § 441a(a) or 11 C.F.R. § 102.9(e)(3).

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